

ADVERSARY PROCEEDING COVER SHEET

ADVERSARY PROCEEDING NUMBER

PLAINTIFF

David M. Nickless, Trustee

DEFENDANTS

Prime Title Services, Inc.
Erin McSweeney
Peter Pappas and
The Massachusetts IOLTA Committee

ATTORNEY (Firm Name, Address, and Telephone No.)

Nickless and Phillips, P.C.
Susan H. Christ
625 Main Street
Fitchburg, MA 01420
978-342-4590

ATTORNEY (Firm Name, Address, and Telephone No.)

PARTY (Check One Box Only)

☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin
☐ Creditor ☐ Other
X Trustee

PARTY (Check One Box Only)

☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin
☐ Creditor **X Other**
☐ Trustee

CAUSE OF ACTION: (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)
Turnover of Property §542

NATURE OF SUIT

(Number of up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property

X 11 - Recovery of money/property - § 542 turnover of property
☐ 12 - Recovery of money/property - § 547 preference
☐ 13 - Recovery of money/property - § 548 fraudulent transfer
☐ 14 - Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien

☐ 21 – Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale Property

☐ 31 – Approval of sale of property of estate and of a co-owner - § 363(h)

FRBP 7001(4) – Objection/Revocation of Discharge

☐ 41 – Objection/ revocation of discharge § 727 (c),(d),(e)

FRBP 7001 (5) Revocation of Confirmation

☐ 51 – Revocation of Confirmation

RFBP 7001(6) – Dischargeability

☐ 66 - Dischargeability - § 523(a)(1), (14), (14a) priority tax claims
☐ 62 - Dischargeability - § 523(a)(2), false pretenses, false representation, actual fraud
☐ 67 - Dischargeability - § 523(a)(4), fraud as fiduciary, embezzlement, larceny
(continued next column)

FRBP 7001(6) – Dischargeability (continued)

☐ 61 - Dischargeability - § 523(a)(5), domestic support
☐ 68 - Dischargeability - § 523(a)(6), willful and malicious injury
☐ 63 - Dischargeability - § 523(a)(8), student loan
☐ 64 - Dischargeability - § 523(a)(15), divorce of separation obligation (other than domestic support)
☐ 65 - Dischargeability - other

FRBP 7001 (7) – Injunctive Relief

☐ 71 – Injunctive relief – imposition of stay
☐ 72 – Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest

☐ 81 – Subordination of claim or interest

FRBP 7001 (9) Declaratory Judgment

☐ 91 – Declaratory Judgment

FRBP 7001(10) Determination of Removed Action

☐ 01 – Determination of removed claim or cause

Other

☐ SS-SIPA Case – 15 U.S.C. §§ 78aaa *et. seq.*
☐ 02 – Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☐ Check if this case involves a substantive issue of state law

☐ Check if a jury trial is demanded in complaint

☐ Check if this is asserted to be a class action under FRCP 23

Demand \$

Other Relief Sought

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES

NAME OF DEBTOR Prime Mortgage Financial, Inc.		BANKRUPTCY CASE NUMBER 08-40238-JBR	
DISTRICT IN WHICH CASE IS PENDING Western Division		DIVISIONAL OFFICE Worcester	NAME OF JUDGE Joel B. Rosenthal
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF		DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING		DIVISIONAL OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Susan H. Christ			
DATE: March 6, 2009		PRINT NAME OF ATTORNEY (OR PLAINTIFF) Susan H. Christ	

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

In re
Prime Mortgage Financial, Inc.
Debtor

Chapter 7
No. 08-40238-JBR

David M. Nickless, Trustee,
Plaintiff

Adv. Pro.
No. 09-

v.

Prime Title Services, Inc.,
Erin McSweeney, Peter Pappas and
The Massachusetts IOLTA Committee
Defendants

COMPLAINT FOR ACCOUNTING AND TURNOVER

JURISDICTION

1. This is a core proceeding and this Court has jurisdiction pursuant to 28 U.S.C. §157(b) and §1334.

PARTIES

2. On January 29, 2008, Prime Mortgage Financial, Inc., a Massachusetts Corporation (“the Debtor”) filed a voluntary petition under Chapter 7 of the U.S. Bankruptcy Code. The Debtor’s principal office is located at 2 Park Central Drive, Ste. 300, Southborough, MA 01772.

3. On January 30, 2008 David M. Nickless was duly appointed Trustee (hereinafter the “Trustee”).

4. The Defendant, Prime Title Services, Inc. (“Prime Title”) is a Delaware corporation with a principal office address of 2 Park Central Drive, Southborough, MA 01772.

5. The Defendant, Erin McSweeney, Esq. ("McSweeney"), is an attorney licensed to practice in the Commonwealth of Massachusetts with a residential address of 3 Admirals Lane Road, Southborough, MA 01772.

6. The Defendant, Peter C. Pappas, Esq. ("Pappas"), is an attorney licensed to practice in the Commonwealth of Massachusetts with a residential address of 98 Harpin Street, Bellingham, MA 02019.

7. The Defendant, the Massachusetts IOLTA Committee, as appointed by the Justices of the Supreme Judicial Court, is located at Seven Winthrop Square, 3rd Floor, Boston, MA 02110-1245.

FACTS

8. Prime Mortgage Financial, Inc. ("the Debtor") filed a voluntary petition under Chapter 7 of the U.S. Bankruptcy Code on January 29, 2008.

9. The Trustee was appointed thereafter on January 30, 2008.

10. Prime Title was organized by Aris Pappas, the President, Treasurer, Secretary and Director of the Debtor corporation to handle a majority of the Debtor's closings.

11. McSweeney and Pappas were retained by Prime Title to conduct closings for the Debtor.

12. Upon information and belief, there are two Prime Title conveyancing accounts currently open at Citizens Bank ("Prime Title Accounts"), of which some or all of the funds being held in these accounts are the property of the Debtor. See account statements attached hereto as Exhibit A.

13. Upon information and belief, Pappas holds an IOLTA account at Citizens Bank ("Pappas IOLTA Account") of which some or all of the funds being held in this account are the

property of the Debtor. See account statements attached hereto as Exhibit B.

14. Upon information and belief, McSweeney holds an IOLTA account ("McSweeney IOLTA Account") of which some or all of the funds being held in the account are the property of the Debtor.

15. On or about October 16, 2008, the Trustee sent a demand letter to Prime Title and Pappas demanding an accounting and turnover of the funds belonging to the bankruptcy estate.

16. As of the date of this complaint, neither Prime Title, Pappas nor McSweeney have supplied the Trustee with an accounting or turned over any of the funds.

17. Interest accruing on the IOLTA accounts is property of the Massachusetts IOLTA Committee and must be accounted for and turned over.

18. The Trustee is seeking an accounting and turnover of any of the funds being held on behalf of the Debtor.

COUNT 1

TURNOVER OF PROPERTY OF THE ESTATE PURSUANT TO 11 U.S.C. §542 (Prime Title Services, Inc.)

19. The Trustee restates and realleges Paragraphs 1 through 18.

20. Pursuant to 11 U.S.C. § 541, the bankruptcy estate includes all legal or equitable interests of the debtor as of the commencement of the bankruptcy case and property acquired after the commencement of the case.

21. The funds currently held in the Prime Title Accounts were property of the Debtor at the commencement of the bankruptcy estate.

22. Prime Title has refused to turnover the funds despite the Trustee's request.

23. Prime Title is still in possession of funds belonging to the Debtor's bankruptcy estate.

WHEREFORE, the Trustee prays that this court (1) order Prime Title to perform an accounting of the funds in its possession being held on behalf of Prime Mortgage Financial Inc., (2) order Prime Title to turnover the funds in its possession being held on behalf of Prime Mortgage Financial Inc., and (3) grant such other relief as the Court deems just.

COUNT II

TURNOVER OF PROPERTY OF THE ESTATE PURSUANT TO 11 U.S.C. §542 (Erin McSweeney)

24. The Trustee restates and realleges Paragraphs 1 through 23.

25. Pursuant to 11 U.S.C. § 541, the bankruptcy estate includes all legal or equitable interests of the debtor as of the commencement of the bankruptcy case and property acquired after the commencement of the case.

26. The funds currently held in McSweeney's IOLTA Account were property of the Debtor at the commencement of the bankruptcy estate.

27. McSweeney has failed or refused to turnover the funds.

28. McSweeney is still in possession of funds belonging to the Debtor's bankruptcy estate.

WHEREFORE, the Trustee prays that this court (1) order McSweeney to perform an accounting of the funds in her possession being held on behalf of Prime Mortgage Financial Inc., (2) order McSweeney to turnover the funds in her possession being held on behalf of Prime Mortgage Financial Inc., and (3) grant such other relief as the Court deems just.

COUNT III

TURNOVER OF PROPERTY OF THE ESTATE PURSUANT TO 11 U.S.C. §542 (Peter Pappas)

29. The Trustee restates and realleges Paragraphs 1 through 28.

30. Pursuant to 11 U.S.C. § 541, the bankruptcy estate includes all legal or equitable interests of the debtor as of the commencement of the bankruptcy case and property acquired after the commencement of the case.

31. The funds currently held in Pappas's IOLTA Account were property of the Debtor at the commencement of the bankruptcy estate.

32. Pappas has failed or refused to turnover the funds.

33. Pappas is still in possession of funds belonging to the Debtor's bankruptcy estate.

WHEREFORE, the Trustee prays that this court (1) order Pappas to perform an accounting of the funds in his possession being held on behalf of Prime Mortgage Financial Inc., (2) order Pappas to turnover the funds in his possession being held on behalf of Prime Mortgage Financial Inc., and (3) grant such other relief as the Court deems just.

David M. Nickless, Trustee

/S/ Susan H. Christ
David M. Nickless, Esq.
Susan H. Christ, Esq.
Nickless and Phillips, P.C.
625 Main Street
Fitchburg, MA 01420
(978) 342-4590
BBO No. 371290
BBO No. 664354
schrist.nandp@verizon.net

EXHIBIT A



1-800-862-6200

Call Citizens' PhoneBank anytime for account information,
current rates and answers to your questions.

US002 BR222

PRIME TITLE SERVICES
CONVEYANCING ACCOUNT
2 PARK CENTRAL DR 3RD
SOUTHBOROUGH MA 01772

RECEIVED
DEC 08 2008

Business Partners III
Account Statement

1 OF 2

Beginning November 01, 2008
through November 30, 2008

Contents

Summary	Page	1
Checking	Page	2

Business Partners Checking III Summary

Account	Account Number	Balance Last Statement	Balance This Statement
DEPOSIT BALANCE			
Checking			
Business Partners Checking III		4,760.52	4,760.52

PRIME TITLE SERVICES
CONVEYANCING ACCOUNT
Business Partners Checking III

= Total Deposit Balance
4,760.52

= Total Relationship Balance
4,760.52

Monthly combined balance to waive monthly fee is 50,000.00
Your monthly combined balance this statement period is 4,760.52

**Citizens Bank**

Document

Page 10 of 12

Commercial Account
Statement

1-800-862-6200

Call Citizens' PhoneBank anytime for account information,
current rates and answers to your questions.**RECEIVED**
DEC 08 2008

1 OF 1

Beginning November 01, 2008
through November 30, 2008

US002 BR222

PRIME TITLE SERVICES CONVEYANCING IOLTA
IOLTA
PETER PAPPAS ATTORNEY AT LAW
2 PARK CENTRAL DRIVE
SOUTHBOROUGH MA 01772**Commercial Checking****SUMMARY****Balance Calculation**

Previous Balance	10,089.09
Checks	.00 -
Debits	9.39 -
Deposits & Credits	.00 +
Interest Paid	4.85 +
Current Balance	10,084.55 =

Balance

Average Daily Balance	10,080.32
Interest	
Current Interest Rate	.55%
Annual Percentage Yield Earned	.59%
Number of Days Interest Earned	30
Interest Earned	4.85
Interest Paid this Year	118.56

PRIME TITLE SERVICES CONVEYANC
IOLTA
PETER PAPPAS ATTORNEY AT LAW
IOLTA Checking

Previous Balance

10,089.09

TRANSACTION DETAILS**Debits****Other Debits**

Date	Amount	Description
11/03	9.39	DDA Interest Transfer

Total Debits

9.39

Interest

Date	Amount	Description
11/28	4.85	Interest

Total Interest Paid

4.85

Current Balance

10,084.55

Daily Balance

Date	Balance	Date	Balance
11/03	10,079.70	11/28	10,084.55

NEWS FROM CITIZENS--Give Help. Give Hope. Be Inspired. Please join us in saluting our new Champions in Action
at citizensbank.com/community.

EXHIBIT B

**Citizens Bank**

Document

Page 12 of 12

**Commercial Account
Statement****1-800-862-6200**Call Citizens' PhoneBank anytime for account information,
current rates and answers to your questions.**1** OF 1

US002 BR222

PETER C PAPPAS ATTY AT LAW
IOLTA
2 PARK CENTRAL DRIVE
SOUTHBOROUGH MA 01772**RECEIVED**
DEC 08 2008Beginning November 01, 2008
through November 30, 2008**Commercial Checking****SUMMARY****Balance Calculation**

		<i>Balance</i>		
Previous Balance	9,387.05		<i>Average Daily Balance</i>	9,387.05
Checks	.00 -			
Debits	.00 -		<i>Interest</i>	
Deposits & Credits	.00 +		<i>Current Interest Rate</i>	.55%
Interest Paid	4.51 +		<i>Annual Percentage Yield Earned</i>	.59%
Current Balance	9,391.56 =		<i>Number of Days Interest Earned</i>	30
			<i>Interest Earned</i>	4.51
			<i>Interest Paid this Year</i>	110.01

PETER C PAPPAS ATTY AT LAW
IOLTA
IOLTA Checking

Previous Balance

9,387.05

TRANSACTION DETAILS**Interest**

Date	Amount	Description
11/28	4.51	Interest

+	Total Interest Paid
	4.51

=	Current Balance
	9,391.56

Daily Balance

Date	Balance	Date	Balance	Date	Balance
11/28	9,391.56				

NEWS FROM CITIZENS--Give Help. Give Hope. Be Inspired. Please join us in saluting our new Champions in Action
at citizensbank.com/community.